



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/3441

Re: Property at 6D King Street, Musselburgh, EH21 7EP (“the Property”)

Parties:

Fleat earth Properties Limited, 1 Park Road, Eskbank, Dalkeith, EH22 3DF (“the Applicant”)

Mr Angus Hirst, 6D King Street, Musselburgh, EH21 7EP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicants.

Background

- 1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, certificate of posting, track and trace report and Section 11 Notice were lodged with the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 30 May 2024 and that they were required to participate.**
- 3. The CMD took place on 30 May 2024. The Applicant was represented by Ms Seaward, solicitor. The Respondent participated and was represented by Mr Ewing from the Council’s Housing Options Team.**

The Case Management Discussion

4. Ms Seaward told the Tribunal that the sole shareholder of the Applicant is 71 years of age and wishes to retire. He is in the process of selling his portfolio of properties to allow him to do that. Her firm has already dealt with the sales of several of these properties. She confirmed that this is the sole reason for the application. There are no rent arrears or tenancy related issues.
5. Mr Ewing and Mr Hirst told the Tribunal that the application is not opposed. Although he has not yet secured alternative accommodation, Mr Hirst does not object to the order for possession being granted. He is being supported by the Housing Options Team and is looking at both the private and social rented sector. He has been supported by them since 2022, when the process started. He is likely to get priority in terms of Council housing if the order is granted. In response to questions from the Tribunal, Mr Ewing said that the Respondent lives at the property alone and is 53 years of age. He is not working and receives benefits. He has mental health issues, COPD and has mobility problems. He is under the care of his doctor.
6. The Tribunal asked the parties for their views on the Tribunal ordering a delay in enforcement if the order is granted, to allow additional time for alternative accommodation to be found. Ms Seaward said that the Applicant would have no objection to this if the extension is for a short period. Mr Hirst said that he did not think a further few weeks would make much difference since he has had no success in finding another home. He added that he is not keen on his neighbours or the property and is content with the order being granted and the property sold.

Findings in Fact

7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 2 February 2023.
9. The Respondent resides at the property alone and has physical and mental health issues.
10. The Applicant wishes to recover possession of the property in order to sell it as its sole shareholder intends to retire.
11. The Respondent has applied to the Local Authority for housing and is being supported by the Housing Options Team.

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 28 August 2016 until 27 February 2017.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, the Tribunal is satisfied that the Applicants served a Notice to Quit and Section 33 Notice on the Respondent on 2 February 2023. The Notice to Quit called upon the Respondent to vacate the property on 28 August 2023, the day following an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 2 February 2023 and gave the Respondent more than 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
16. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (c) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (d) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under

subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months’ notice that the Applicant required possession of the property.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

18. The Tribunal had regard to the following: -

(a) The Respondent does not oppose the application.

(b) The Respondent does not wish to continue to live in the property. However, he has not found alternative accommodation. He has applied to the Local Authority and is receiving advice and support from the Housing Options Team.

(c) The Applicant wishes to recover possession of the property so that it can be sold.

19. For the reasons specified, the Tribunal is satisfied that it would be reasonable to grant the application.

20. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order. The Tribunal then considered whether to order a delay in execution of the order for possession in terms of Rule 16A of the Procedure Rules. The Tribunal noted that a short extension is not opposed by the Applicant. The Respondent is not convinced that a delay will ensure that alternative accommodation will be found and is keen to move out of the property. The Tribunal noted that the Respondent has both mental and physical health problems and may become homeless if he is unable to find alternative accommodation. The Tribunal is therefore satisfied that they should order a delay in execution to 8 August 2024.

Decision

21. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party

must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Josephine Bonnar

Josephine Bonnar, Legal Member

30 May 2024